

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**JANICE HARGROVE WARREN**

**PLAINTIFF**

**v.**

**Case No. 4:19-cv-00655-BSM**

**CHARLES MCNULTY, et al.**

**DEFENDANTS**

**RESPONSE TO DEFENDANTS' MOTION TO STRIKE**

Plaintiff, by and through her legal counsel, SARAH HOWARD JENKINS, PLLC, responds to Defendants Motion and says:

1. Plaintiff admits that at 7:49 a.m., Friday, February 11, 2022, Plaintiff filed a Second Amended Pretrial Disclosure that added 25 pages, primarily email communications between Dr. Jerry Guess and defendant, Dr. Linda Remele and a new witness, Kimala Forrest.

2. Of these 25 pages, 23 were included in the 869 pages of Defendant PCSSD's January 20, 2022, FOIA disclosure 1-4-2022 3-1, at 3:12 p.m. Plaintiff's counsel began her review of the 869 pages of emails on January 24, 2022. Among those emails was evidence supporting Dr. Warren's claim of retaliation and punitive damages. Five of those 23 pages disclose an exchange between former Robinson Middle School Principal Kimala Forrest, a Black female, and Defendant Dr. Linda Remele. Plaintiff's counsel believed that the exchange resulted in Ms. Forrest being targeted for retaliatory conduct.

3. Plaintiff counsel began her efforts to locate Ms. Forrest to verify the facts and the results of Ms. Forrest's 2012 exchange with Dr. Remele. Finally, on Wednesday, February 9, 2022, Ms. Forrest called Plaintiff's counsel at the request of a LinkedIn connection. A previous call to a number located on the internet for Ms. Forrest was either to an incorrect number or unproductive in motivating Ms. Forrest to respond.

4. To comply with the duty of making a reasonable inquiry before presenting or advocating a position before this Court, Fed. R. Civ. Pro. 11 (b), Plaintiff's counsel discussed the following subjects with Ms. Forrest: 1) the email exchange, 2) her tenure with PCSSD as a middle school principal, and 3) her reasons for leaving PCSSD's employment. Plaintiff's counsel asked Ms. Forrest to review documents in Ms. Forrest's possession to refresh her recollection and, then, to record her recollection of the events that followed the email exchange and preceded her resignation. Plaintiff's counsel conferred again with Ms. Forrest and concluded that including Ms. Forrest as a witness would be based on a good faith belief that the factual contentions had evidentiary support.

5. On page 21, ¶11 (a), Plaintiff's Pretrial Disclosures state that she intends to introduce "Any document disclosed by PCSSD in response to FOIA." Defendants cannot allege surprise from the inclusion of emails that they disclosed responding to FOIAs. More importantly, Plaintiff supplemented her responses to Defendants Interrogatories by emailing the 25 pages before filing her Second Amended Pretrial Disclosures.

6. On February 9, 2022, Plaintiff consented to the remote appearance of a defense witness who had been formerly listed as "may call." On February 7, 2022, at 8:59 p.m., defense counsel responded to Plaintiff's January 27, 2022, request for Defendants' position on going forward with this trial as scheduled. On February 4, 2022, Defendants filed a Motion *in Limine*, a rehash of an earlier Motion *in Limine*. Plaintiff has given the Defendants the flexibility they have sought and seeks the return of her gesture. More importantly, to bar the admission of the 25 pages and Ms. Forrest's testimony would be *unfairly* prejudicial.

Respectfully submitted this 12th day of February, 2022  
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